



1 claims that defendants have used their offices and authority to illegally bug his home and  
2 telephone, search his garbage, and wrongfully seize his vehicle. He also alleges that  
3 defendants have attempted to frame him on false criminal charges.

4 Defendants argue, on the other hand, that Arpaio was the subject of plaintiff's ongoing  
5 abuse and harassment. Defendants contend that plaintiff made death threats against Arapio,  
6 and engaged in a campaign of sending abusive and harassing emails to the Maricopa County  
7 Sheriff's office. On March 7, 2001 and June 12, 2002, Sheriff Arpaio obtained two different  
8 injunctions against harassment related to plaintiff's threatening behavior.

## 9 II

10 Defendants first move for summary judgment on count III wherein plaintiff alleges  
11 that defendant Maricopa County and Sheriff Arpaio wrongfully invaded his privacy by  
12 illegally wiretapping his phone and searching his trash.<sup>1</sup> Arizona recognizes the tort of  
13 "intrusion upon seclusion" as set forth in the Restatement (Second) of Torts § 652B (1977),  
14 which provides that "[o]ne who intentionally intrudes, physically or otherwise, upon the  
15 solitude or seclusion of another or his private affairs or concerns, is subject to liability to the  
16 other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable  
17 person." See Hart v. Seven Resorts Inc., 190 Ariz. 272, 279, 947 P.2d 846, 853 (Ct. App.  
18 1997) (citing Godbehere v. Phoenix Newspapers, Inc., 162 Ariz. 335, 783 P.2d 781 (1989)).  
19 The invasion may be conducted "with or without mechanical aids, to oversee or overhear the  
20 plaintiff's private affairs, as by . . . tapping his telephone wires." Restatement (Second) of  
21 Torts § 652B cmt. b.

22 Defendants claim that, as a matter of law, the allegation that they searched plaintiff's  
23 trash cannot form the basis of an invasion of privacy claim. We agree. The defendant is  
24 subject to liability for invasion of privacy only when he has intruded into a private place.

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26 <sup>1</sup>Defendants contend, as they did in their motion for judgment on the pleadings (doc.  
27 16), that the count III invasion of privacy claim must fail because defendant did not comply  
28 with the notice requirement of A.R.S. § 12-821.01. We have already considered and rejected  
this argument in our previous order (doc. 19) and we will not revisit it here.

1 Hart, 190 Ariz. at 279, 947 P.2d at 853; see also Medical Lab. Mgmt. Consultants v. ABC,  
2 Inc., 306 F.3d 806, 812 (9th Cir. 2002) (to prevail on invasion of privacy claim in Arizona,  
3 plaintiff must have an objectively reasonable expectation of privacy). Here, plaintiff had no  
4 objectively reasonable expectation of privacy in garbage left for collection outside the home.  
5 See California v. Greenwood, 486 U.S. 35, 41, 108 S. Ct. 1625, 1629 (1988). Accordingly,  
6 this allegation will not support an invasion of privacy claim.

7 The wiretap allegation presents a different issue. Plaintiff alleges that he discovered  
8 a wiretap on his telephone and that the wife of defendant Mark Koppinger admitted to a  
9 reporter that her husband was illegally wiretapping plaintiff's home. PSOF ¶¶ 38, 39.  
10 Defendants make no attempt to refute these allegations, either by denying that a wiretap  
11 occurred, or alternatively by establishing that it was supported by a valid search warrant.  
12 Instead, defendants simply argue that even if such an intrusion occurred, it was not "highly  
13 offensive" as a matter of law because it was "routine police work done as part of the  
14 investigation of Plaintiff's violent and criminal behavior." Id. at 9.<sup>2</sup> Whether this alleged  
15 conduct was highly offensive, however, is a fact question based in large part on whether the  
16 police were justified if a wiretap in fact occurred. Because a material issue of fact exists, we  
17 deny defendants' motion for summary judgment on count III.

### 18 III

19 Plaintiff also claims, pursuant to 42 U.S.C. § 1983, that defendants violated his  
20 constitutional rights by seizing his automobile without a warrant and by framing him with  
21 a false drug test while he was incarcerated. Plaintiff was arrested and charged with attempted  
22 murder. He claims that while incarcerated, defendants seized his automobile, even though  
23 the car had no relevance to the criminal charge. He further contends that, despite specific  
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26 <sup>2</sup>We reject outright defendants' argument that plaintiff waived his right to privacy, and  
27 therefore subjected himself to an allegedly illegal wiretap, when he became a vocal critic of  
28 Sheriff Arpaio. See Defendants' Motion for Summary Judgment at 9. A citizen does not  
forfeit his rights once he chooses to publically criticize a government official.

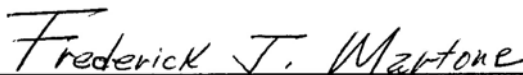
1 requests, defendants have failed to produce any evidence establishing probable cause to seize  
2 the car.

3 Plaintiff also claims that defendants attempted to frame him on false criminal charges  
4 while he was incarcerated in the Maricopa County jail. He claims that a detention officer  
5 conducted a drug test in a highly unusual manner and then advised him that he had failed the  
6 test and that his probation would be revoked. Two independent agencies subsequently  
7 conducted additional tests, however, and concluded that plaintiff was in fact drug free. Less  
8 than a week after the test, plaintiff's lawyer asked the County to preserve the urine sample  
9 and test results, but none of this evidence has been produced during discovery.

10 Defendants' only response is that these allegations are "related to legitimate police  
11 activity." Reply at 3. This is wholly insufficient to support their motion for summary  
12 judgment. Without attempting to justify the seizure of the car or explain the circumstances  
13 of the drug tests, material facts exists as to whether these incidents were in fact "related to  
14 legitimate police activity" and therefore not in violation of plaintiff's constitutional rights.

15 Therefore, **IT IS ORDERED DENYING** defendants' motion for summary judgment  
16 (doc. 28).

17 DATED this 27<sup>th</sup> day of June, 2006.

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21 Frederick J. Martone  
22 United States District Judge  
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